

General Information Letter: Explanation of Illinois tax treatment of contributions to Bright Start college savings plans.

November 12, 2002

Dear:

This is in response to your telephone inquiry of November 12, 2002, in which you request a letter ruling. The nature of your request and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), which may be found on the Department's web site at www.revenue.state.il.us.

In our telephone conversation, you asked what would be the Illinois income tax consequences of making a contribution to a Bright Start Plan in 2002, and then withdrawing the contribution and any earnings from the plan in 2003 and rolling the withdrawal over into another plan qualifying under Section 529 of the Internal Revenue Code. You also asked for a summary of the changes made in 2002 to the Illinois Income Tax Act provisions for Section 529 plans.

Response

Under Section 203(a)(1) of the Illinois Income Tax Act (35 ILCS 5/101 *et seq.*), the computation of an individual's net income subject to tax begins with that individual's adjusted gross income, as properly reported for federal income tax purposes. Various addition and subtraction modifications are then made under Section 203(a)(2).

Section 203(a)(2)(Y) of the Illinois Income Tax Act allows an individual to subtract:

For taxable years beginning on or after January 1, 2002, moneys contributed in the taxable year to a College Savings Pool account under Section 16.5 of the State Treasurer Act, except that amounts excluded from gross income under Section 529(c)(3)(i) of the Internal Revenue Code shall not be considered moneys contributed under this subparagraph (Y).

The College Savings Pool accounts referred to in this section are being marketed by the State Treasurer under name "Bright Start." The clause excepting amounts excluded under Section 529(c)(3)(C)(i) of the Internal Revenue Code was added by Public Act 92-626. That section of the Internal Revenue Code excludes from federal adjusted gross income any earnings of a Section 529 plan that are distributed from the plan and, within 60 days, are rolled over into another Section 529 plan. Accordingly, under the new language enacted by Public Act 92-626, no subtraction is allowed for the portion of any amount rolled over into a Bright Start plan that is deemed to be earnings of the Section 529 plan from which the rollover amount was distributed.

Under Section 203(h) of the Illinois Income Tax Act, no addition or subtraction may be made unless expressly provided in Section 203. There is no provision for adding back any distribution from a Bright Start plan that is excluded from federal adjusted gross income. Accordingly, any amount withdrawn from a Bright Start plan and rolled over into another Section 529 in a manner that excludes the withdrawal from federal adjusted gross income will not be taxed by Illinois. This is true

even if the withdrawal includes amounts for which a subtraction under Section 203(a)(2)(Y) was allowed.

As stated above, this is a general information letter which does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b). If you have any further questions, you may contact me at (217) 782-7055.

Sincerely,

Paul S. Caselton
Deputy General Counsel -- Income Tax